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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/669,687

09/25/2003

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25944 7590 04/22/2010
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EXAMINER

LEE, JINHEE J

ART UNIT

PAPER NUMBER

2841

NOTIFICATION DATE

DELIVERY MODE

04/22/2010

ELECTRONIC

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1 RECORD OF ORAL HEARING
2 UNITED STATES PATENT AND TRADEMARK OFFICE

3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

6
7 *Ex Parte* KENJI SAMOTO

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9 Appeal 2009-011819
10 Application 10/669,687
Technology Center 2100

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12 Oral Hearing Held: March 24, 2010

13
14 Before LEE E. BARRETT, HOWARD B. BLANKENSHIP and
DEBRA K. STEPHENS, *Administrative Patent Judges*.

15
16 APPEARANCES:

17 ON BEHALF OF THE APPELLANT:

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1 USHER: Calendar No. 70, Appeal No. 2009-011819, Mr. Schulte.

2 MR. SCHULTE: Good morning, Your Honors.

3 JUDGE BARRETT: Okay. Whenever you're ready.

4 MR. SCHULTE: My name is Scott Schulte with Oliff & Berridge.
5 I'm here to represent the Appellant in this case. There's one issue, the
6 rejection under 103(a) over at J.P. '949'. What I represent here is our Figures
7 2 and 3 and the Prior Art's Figure 1, and then the annotated Figure 1 from
8 the Examiner's Answer, page 4. First, let's sort of go over a brief review of
9 what we're trying to claim and what we think is distinguishable over the
10 Prior Art or not suggested by the Prior Art.

11 What the top case is directed to is printers. It's specifically the cables
12 inside those printers and, if you see from our Figure 2, you have a plurality
13 of flexible cables where the first end is connected to the controller, and the
14 second end is connected to the print head. And as you can see, it's a curved
15 cable and then the cable is flexible because, as you can appreciate from a
16 printer, the print head goes back and forth. It's got to be able to move with
17 the print head.

18 You can see from our Figure 2 -- and this is what we have in our
19 claims, is a fact that the innermost cable is longer -- I'm sorry, is shorter than
20 the outermost cable, and that should appear pretty obvious because it's just --
21 the innermost cable has a shorter distance to travel from the controller to the
22 print head. And what we think distinguishes the Prior Art here is the fact
23 that as illustrated in our Figure 3 is the fact that we have this first and second
24 positioning system at both ends of the cable. So in Figure -- as you can see
25 from our Figure 3, the first positioning system as indicated on the left is 107,
26 and our second positioning system as indicated as 108 on right-hand

1 side. And these things are attached to the cables or added to the plurality
2 of -- added to each of the plurality of cables because we're trying to simplify
3 the manufacturing. You can appreciate with cables a different length, what
4 was done in the Prior Art was the fact that you had to measure all these
5 cables individually, and that just simply just took time to measure all these
6 cables of different length. Providing these first and second positioning
7 systems, you're able to easily manufacture and you're able to accurately
8 place in inner printer without positioning errors.

9 Now what the Prior Art discloses in J.P. '949' is, again, they have a
10 print head, they have a controller and they have cables. 13 is the head cable
11 and then 15 -- or 15 and 17 are the outer and inner cables, respectively. And
12 the way they operate and the way they're described is the fact that the cables
13 15 and 17 are inserted into the connectors 21 and 23, which is on the top
14 there, and the other end of the cables 15 and 17 is inserted into the
15 connectors 25 and 27, with this presser plate 29 pressing down on the cables.
16 It doesn't say exactly why, but I'm assuming because it has to make that
17 sharp turn. They want to be able to keep it in place -- accurately keep it in
18 place.

19 Now if you see from their Figure 1, and this is something we've
20 already thrown out to prosecution, is the fact that there's nothing at the end
21 of those cables. In other words, they do not have a first and second
22 positioning system added to the ends of the cables.

23 JUDGE BARRETT: Don't they have some sort of connector or
24 something?

25 MR. SCHULTE: No, they don't, Your Honor. The way it's described
26 in J.P. '949' is the fact that you have an end inserted into a connector, and it

1 inserts in connector 21 through 27. In that part, 21 through 27, is actually
2 being asserted by the Examiner as being the first and second positioning
3 parts from which the first and second positioning systems are asserted or
4 attached, as according to our claims. So, again, it's just the cable. In fact, if
5 you pull the cable out of the printer, it's just a plain cable. There's nothing at
6 the ends. It's just an end of a cable. What the Examiner --

7 JUDGE BARRETT: But once it gets put into the machine, isn't that a
8 positioning system? I mean, once it's attached, isn't it --

9 MR. SCHULTE: What's added -- the thing is what is -- I know we've
10 already -- what is added to the cable and -- what is the first and second
11 positioning added to a cable and what is the first and second positioning part
12 from which the first and second positioning systems are added through your
13 specification, they take a broad interpretation of our claims. It would -- we
14 would argue that it's reasonable to assert that something has to be added to
15 the cable. It just can't be a plain cable or a plain cable inserted into a
16 printer -- inside of a printer.

17 JUDGE BARRETT: You say it has to be added to the cable?

18 MR. SCHULTE: Something is added to the cable, and for our -- and
19 that's why in the prosecution, the claim originally read a first and second
20 positioning system provided to the cables. During an interview and
21 suggested by the Examiner, we changed the word position to added in order
22 to make it clear that it's just not a cable, it's something just -- it's not a plain
23 cable, it's something added., because what the Examiner's always asserted in
24 the off section is the fact that there's a first and second positioning system
25 provided at the end of the cables. And they said -- near 21, 23, and 29, but
26

1 the thing is you see there's nothing provided on the cables near those parts,
2 it's just a plain cable.

3 If you look at the Examiner's Answer on page 4, she tries to circle
4 what this first and second positioning system -- and I have to note that she
5 doesn't even circle one of the ends of the cables on the bottom there for the
6 first positioning system. And, again, it's just plain cables and, as we -- and
7 like I said, we don't think that's -- just saying that the end of a cable is a fair
8 interpretation of the claim. Especially, according to our application, by
9 having these first and second positioning systems, you can accurately
10 position this cable and it's easier to manufacture cables because you're able
11 to, again, accurately position the manufactured cables at different lengths.

12 And, again, this is all going on our reason. Like I said, there's simply
13 nothing there. She said there's something on it but, again, we disagree. We
14 don't think there's anything there.

15 She changes from a 102 to 103 rejection because she said -- well, once
16 she's asserting that in the first and second positioning system add provided,
17 and it would have been obvious to add. And reading her comments, I think
18 she's gotten the issue confused. I think she said -- she thinks there's one
19 there and that by adding it, I think she's implying that we're taking a one-
20 piece structure and making a two-piece structure. Well, we think that's
21 wrong. I think by adding the word added it doesn't change it from a one-
22 piece to a two-piece structure. If you look at our Claim 4, we say
23 (indiscernible). If you look at our Claim 5, we say it's something that's been
24 attached to the ends of the cables. So I think she's gotten the 103 confused.
25 Again, there's nothing provided on and, to say it would have been obvious to
26 add it, there's nothing there to add or to make obvious -- to obviously add.

1 I think the one thing also in her -- in the Examiner's Answer that she
2 came back was that we've admitted the fact that we have cables, but that the
3 Prior Art failed to disclose the first and second positioning system that is
4 being claimed, and she appears to indicate that's a contradiction. Well, we
5 disagree. We all have cables. You see cables in our Figure 2, you can see
6 there are cables in their Figure 1. What separates us from the Prior Art is the
7 fact that we have these first and second positioning systems added. And I
8 keep emphasizing the word added because that was emphasized in the Briefs
9 and it was in the amendment that we had provided. So, again, we don't think
10 there's a contradiction there.

11 I think the Examiner's Answer also indicated the fact that we're doing
12 a product-by-process because of the word added. Well, again, we don't
13 disagree. You know, if she's going to assert product-by-process, the end
14 result is a -- is something that is added, provided to, or however you want to
15 phrase it, to the end of the cables. So -- and I guess the last argument that
16 was raised by the Examiner is that she's clearly indicated where it's provided
17 on. And, again -- and I'll sort of end with this, is, one, it's just simply
18 nothing there. It's just simply cables. So to say that there is a -- to say that
19 the end of a cable is a first and second positioning system is contradictory to
20 our -- it's not a fair interpretation of our specification, it's not a fair
21 interpretation of the claims, and their cables cannot achieve the advantage
22 that we describe in our specification because, again, they don't have the first
23 and second positioning system.

24 And if there's any questions, I'm --
25
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1 JUDGE BLANKENSHIP: On page 4 of the Examiner's Aanswer
2 where the Examiner indicates the first positioning system, what is that cross
3 section there?

4 MR. SCHULTE: The circle with the -- the circle that she provided
5 or --

6 JUDGE BLANKENSHIP: Inside the circle, the cross-section, the hex
7 lines?

8 MR. SCHULTE: That's the pressure plate, pressure plate 29 that's
9 being used, and this is -- it doesn't describe very clear in the Prior Art, but I
10 think --

11 JUDGE BLANKENSHIP: Doesn't it serve the position that they're
12 cables to some extent?

13 MR. SCHULTE: Right. I think what it's doing is it's pushing -- I
14 think what happens is because this thing has to make a sharp turn, at the
15 ends of the cables inserted into these connectors 25 and 27, this pressure
16 plate, which is actually part of the printer, is actually being used to push
17 down so that it does make this turn. Otherwise -- because it's like I
18 imagined, you've got these cables possibly coming up and into the feed path.

19 And another thing I'd like to --

20 JUDGE BLANKENSHIP: So what is that --

21 JUDGE STEPHENS: Can you pull the picture over?

22 MR. SCHULTE: Sure.

23 JUDGE STEPHENS: Thank you.

24 JUDGE BLANKENSHIP: So why does that not serve to position of
25 the cables?

26

1 MR. SCHULTE: Well, I think it does position the cables, but it's not
2 a first and second positioning system added to the cables. One thing I'll also
3 note is the fact that we did receive a restriction requirement in this
4 application alleging the fact that a printer is distinct from a cable. So we
5 took the -- and this is just from the Examiner's assertion requirement. And,
6 again, 29 is part of the printer. It's not a cable, it's nothing added to the
7 cable. And another thing to know is that this 29 is only added to one end of
8 the cables. If you look at the other end of the cable -- and, again, indicated
9 as second positioning part, there's just simply nothing there. It's just simply
10 the end of the cable inserted into these connectors. And, again, keep in mind
11 that she's asserting --

12 JUDGE BLANKENSHIP: Well, the claim says added near the
13 second --

14 MR. SCHULTE: Right.

15 JUDGE BLANKENSHIP: Do you understand?

16 MR. SCHULTE: But you still have the added language. And, again,
17 if you'll look in the last part of the claim, we've got these first and second
18 positioning parts, and she's asserting that -- and I'll just use from this part, 21
19 and 23 are the first and second positioning parts. So to say that 21 and 23
20 are the first and second positioning parts, then what's the first and second
21 positioning system? And, again, from her restriction requirement, if a
22 printer is distinct from a cable -- and, again, we don't think it would be
23 reasonable to come back and say all right, then 29 is part of the cable or
24 added to the cable. So --

25 JUDGE STEPHENS: So where specifically are you saying the
26 flexible cable harness is?

1 MR. SCHULTE: It's -- 13 is the head cable and 15 and 17 are the
2 inner and outer -- or outer and inner cables. And that's -- it's just a standard
3 cable, nothing, nothing complicated about it.

4 JUDGE STEPHENS: Is that a harness?

5 MR. SCHULTE: It's just --

6 JUDGE STEPHENS: Is that a harness?MR. SCHULTE: I would say
7 reasonably that it is a cable harness.

8 JUDGE BARRETT: But it doesn't have connectors at the end, is what
9 you're saying?

10 MR. SCHULTE: Correct. Because there's -- subtly, there's just
11 nothing there.

12 JUDGE BARRETT: If it had connectors at the end?

13 MR. SCHULTE: Then I think at the end of it -- and it would probably
14 be fair to say that with our language, it could be a first and second
15 positioning system. But, again, they don't discuss anything being added to
16 the end. Again, the way it's just described, it's just one end inserted into a
17 connector or the printer.

18 And this is something we went back and forth with the Examiner in
19 the briefs and the interviews. She said there's something unnumbered -- let
20 me make sure I have -- unnumbered on the cables at 29 and unnumbered on
21 the cables at 21, 23. And I think she tried to circle what that is but, again,
22 we don't see it. What is unnumbered on the cables, other than it just being
23 the end of a cable.

24 JUDGE BARRETT: Okay. Is that it? Are there any questions?

25 JUDGE STEPHENS: I don't have any questions.

26 MR. SCHULTE: Okay. Thank you, Your Honor.

1 JUDGE BARRETT: Thank you.

2 Whereupon, the proceedings, at 9:46 a.m., were concluded.

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